IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8753 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDIAN INSTITUTE OF MANAGEMENT - Petitioner(s)

Versus

GUJARAT MAZDOOR SABHA & 18 - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR MUKUL SINHA for Respondent(s) : 1 - 17, 19,
- for Respondent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/01/2006

ORAL JUDGMENT

1. The petitioner, namely Indian Institute of

Management (“IIM” for short) has filed this petition under Articles 226 and 227 of the Constitution of India praying for quashing and setting aside the order passed by the learned Assistant Labour Commissioner making reference under Section 10 of the Industrial Disputes Act to the Labour Court, Ahmedabad. The petitioner has also prayed for a writ of Prohibition, prohibiting all further proceedings before the Labour Court, pursuant to the reference order and the notice of hearing served by the Labour Court, Ahmedabad.

2. The petition was admitted and Rule was issued on 14th December, 1992. Ad-interim relief in terms of para 21(D) was granted whereby further proceedings before the Labour Court in the matter being LCR No. 1295 of 1992 were stayed. The said interim relief continued till 14.10.2005 and this Court vide its order of even date has vacated the interim relief as no one was present on behalf of the petitioner.

3. Heard Mr. K.S. Nanavati for the petitioner and

Mr. Rajesh P. Mankad with Dr. Mukul Sinha for respondent Nos. 1 to 17 and learned Assistant Government Pleader Mr. Dabhi, appearing on behalf of respondent No.18 i.e. Assistant Labour Commissioner.

4. It is the case of the petitioner that the petitioner is an autonomous institute engaged in imparting education to management students. For appointment of different category of persons, IMM has its own policy and recruitment procedure and it employs such class of people only after publishing recruitment advertisement, taking written and/or oral tests by specially empowered committee, and those who are found suitable are appointed by the petitioner in such posts. It is also the case of the petitioner that so far as 16 ladies who are respondent Nos. 2 to 17 in this petition, who have got their demand for being referred to the dispute for adjudication to the Labour Court, are concerned, they were never engaged by the petitioner and they were not on the regular pay roll of the petitioner. Moreover, 16 ladies were never issued any

attendance cards so as to recognize them as workers of the petitioner nor any appointment letters have ever been issued in their favour by the petitioner. Even wages of 16 ladies were never paid by the petitioner at any point of time. The petitioner has not exercised any power over the working of 16 ladies and thus, there existed no relationship of employer-employee between the petitioner and these 16 ladies. It is also the case of the petitioner that it was not within the control or supervision of the petitioner as to how these 16 ladies came to work in IIM campus or as to for how many hours they remained within the campus or as to who distributed them work of cleaning the various parts of the building and compound of IIM etc. The petitioner, therefore, did not exercise any sort of control, either direct or indirect, or any supervision over the working of these 16 ladies.

5. It is also the case of the petitioner that respondent No. 19 i.e. Saundarya Safai Utkarsh

Mahila Sewa Sahakari Mandali Ltd.(“Mandali” for short), which is the welfare organization, had made an offer by its letter dated 11.4.1988, for providing cleaning establishment at MDC and main complex of IIM which included cleaning work of Class-room complex area, office building, etc. and had offered to provide service on the terms and conditions mentioned in the said letter. After receipt of such letter, representative of the Mandali had personal discussion with the officials of IIM and at the said meeting, it was confirmed that the job work would be undertaken by the Mandali and the petitioner would pay to the Mandali consolidated amount for such cleaning, sweeping work and on that understanding, work of cleaning, sweeping etc. was entrusted to the Mandali. It was also decided that it was only for the Mandali to provide number of sweepers, distribute the work, etc. and the petitioner had no concern with the mode and manner of sweeping work done by ladies who used to come for that work. The Mandali, accordingly, started carrying out the work as per

the said contract through its working members i.e. respondent Nos. 2 to 17. The said members of the Mandali were not the contract employees. They were not even the employees of the Mandali much less the employees of the petitioner.

6. It is also the case of the petitioner that despite these facts, respondent No.1 Union i.e. Gujarat Mazdoor Sabha, by its letter dated 6th September, 1991, moved the Assistant Labour Commissioner seeking relief of conciliation in the matter of alleged industrial dispute by invoking his jurisdiction under the Industrial Disputes Act, for a direction as regards reinstatement of those 16 ladies with the petitioner with back wages for the alleged intervening period and failing such conciliation, requested to get reference made to the Labour Court for adjudication of the said industrial dispute.

7. On receipt of the notice issued by the Assistant Labour Commissioner in Conciliation Case

Nos. 3276/1991 to 3291/1991 dated 2nd August, 1991, the petitioner filed its reply on 3rd October, 1991, explaining inter-alia, the correct position and requested the Conciliation Officer to dismiss the complaints and urged that it was not within the power and competency of the Assistant Labour Commissioner to refer the dispute to the Labour Court for adjudication since there did not exist any industrial dispute nor there was any relation of employer-employee between the petitioner and these 16 ladies. Respondent No.1 Union has also filed its counter reply on 18.10.1991 to the reply filed by the petitioner reiterating the demand raised by its earlier demand letter dated 6th September, 1991. The petitioner has also filed its further reply on 30th October, 1991, inter alia, contending and ascertaining that the work executed by working members of the Mandali could not be termed to be the work done by the members of the Institute particularly in light of the fact that the Mandali had undertaken the work of cleaning and sweeping of the premises of IIM on payment of particular

amount and requested the Assistant Labour Commissioner not to entertain the complaints filed by the Union and to dismiss the same.

8. It is also the case of the petitioner that during pendency of the aforesaid proceedings before the Assistant Labour Commissioner, the Mandali appeared and moved an application on 30th October, 1991, for permission to be joined as party to the said proceedings, inter alia, on the ground that those 16 ladies who had raised demand, were founder members and share holders of the Mandali and they were not the employees of the petitioner. It was also contended that the said ladies have got them self-employed as per the internal management of the Mandali at various places. In spite of this factual position, the Assistant Labour Commissioner had refused permission to the Mandali being impleaded as party in the said conciliation proceeding vide his order dated 30.11.1991. Independent of Mandali's request for becoming a party to the proceedings pending before the

Assistant Labour Commissioner, the petitioner had also demanded that the Mandali be made as party so that true and compete nature of present controversy could have been brought on record with the help of the relevant documents/ evidence which were in the possession and/or control of the Mandali. However, without considering the request both of Mandali and petitioner and without considering the facts of the case, the Assistant Labour Commissioner proceeded to refer the dispute for adjudication to the Labour Court under Reference (LCA) No. 1295 of 1992 by an order dated 20.1.1992 and in fact made a reference on 24.6.1992 to the Labour Court, Ahmedabad for adjudication and the said reference was registered as Reference (LCA) No. 1295 of 1992. The labour Court had issued notice to the petitioner and the Union. The respondent Nos. 2 to 17 were directed to file their statement of claim and the petitioner was directed to file its written statement. It is at this stage, the petitioner has invoked the extraordinary writ jurisdiction of this Court and filed the present petition. Since the

interim relief was granted against further proceedings in the said reference, nothing has happened before the labour Court right from 1992 onwards.

9. Mr. K.S. Nanavati, learned senior counsel, appearing with Mr. Nandish Chudgar for the petitioner, has submitted that the impugned order passed by the Assistant Labour Commissioner is violative of the provisions of the Industrial Disputes Act as being arbitrary and contrary to the specific provisions of law as also violative of the constitutional provisions. He has further submitted that the Assistant Labour Commissioner has passed the impugned order under purported exercise of powers vested in him under Section 10 of the Industrial Disputes Act. However, exercise of such power of referring the dispute to the Labour Court is patently bad, illegal and without jurisdiction and contrary to the statutory provisions and hence it is nullity in the eye of law. He has further submitted that the impugned order is clearly beyond

the scope of the Act, so far as the demand raised by 16 ladies is concerned as they were never workers of the petitioner. He has further submitted that the reference is incompetent and is not maintainable in law since as a matter of fact no dispute existed between the petitioner and those 16 ladies, as also because the petitioner is not an Industry and is not amenable to the provisions of the Industrial Disputes Act. He has further submitted that a bare perusal of the said demand clearly reveals that it is to the effect that 16 ladies be reinstated in service of IIM with full back wages. However, the said demand could not have been referred to for adjudication as there did not exist employer-employee relationship between the petitioner and the said 16 ladies. He has, therefore, submitted that the order has been passed without application of mind and hence the same is perverse and liable to be quashed.

10. Mr. Nanavati further submitted that Section 10 of the Act postulates that where the

appropriate Government is of the opinion that any industrial dispute exists, or is apprehended, it would, at any time, by order in writing refer the said matter to the Tribunal for adjudication. It is, therefore, necessary that there should be a dispute or difference which would emanate controversy, fairly definite and/or real substance. He has submitted that in the present case, no such dispute existed at all. Even according to the Mandali, those 16 ladies on whose behalf the Union had sought conciliation were not the employees of the petitioner and they were getting self-employment by virtue of they being the working members and share-holders of the Mandali. Further the word 'dispute' connotes that it must be a grievance felt by a class of workmen, and which the employer is in a position to redress. This fact is also missing and rather completely absent in the present case and the petitioner IIM could not have redressed the grievances of the members of the Mandali since, as per the admitted position as made out by the

Mandali, those 16 ladies were not the employees of the petitioner IIM. He has, therefore, submitted that the relationship of master and servant or employer-employee relationship is must before any dispute can be said to be an industrial dispute and can be referred to any authority for adjudication.

11. Mr. Nanavati has further submitted that neither the Union nor the said 16 ladies adduced any evidence to show that they were employees of the petitioner. He has further submitted that the Mandali in its written statement filed before the Conciliation Officer, in clear terms, admitted that these 16 members were the founder members of the society and were not the employees of the petitioner. This fact was also consistently maintained by the petitioner stating that there did not exist any master-servant relationship as between the petitioner and these 16 ladies, besides stating that they were never under the control or supervision of the petitioner, nor they have ever

been paid by the petitioner nor they were ever issued any Attendance Card, or any appointment letters; nor their names were ever entered in the muster roll or pay roll of the petitioner. In spite of this clear position as emerged from the evidence, the Assistant Labour Commissioner committed grave error or law in presuming that those ladies were the workers of the petitioner and thereby committed further error of law in ordering the reference to be made for alleged dispute, which dispute never existed. He has, therefore, submitted that on this ground alone, the impugned order of reference requires to be quashed and set aside.

12. Mr. Nanavati has further submitted that as per the settled legal position, the State Government, as appropriate authority, before exercising the power under Section 10 of the Industrial Disputes Act has to consider the relevant material placed before it and such consideration of relevant material should be

reflected in the order of reference and if it is not so reflected and if the Government omits to take into account the relevant considerations, it is a material irregularity on the part of the appropriate Government. He has further submitted that the Assistant Labour Commissioner before deciding to refer the dispute to the Industrial Court has not considered the relevant factors namely there did not exist any relationship of employer-employee as between the petitioner and those 16 ladies and hence there was no industrial dispute at all as contemplated under Section 2(k) of the Act, and since it is clearly contrary to the principles laid down by the Hon'ble Supreme Court, the order of reference is nullity in the eye of law and hence, the impugned order deserves to be quashed.

13. In support of these submissions, Mr. Nanavati has relied upon the decision of the Hon'ble Supreme Court in the case of *State of Bombay Vs. K.P. Krishnan and others [AIR 1960 SC*

1223], wherein it is stated that it may for instance be open to the Government in considering the question of expediency to enquire whether the dispute raises a claim which is very stale, or which is opposed to the provisions of the Act, or inconsistent with any agreement between the parties, and if the Government comes to the conclusion that the dispute suffers from infirmities of this character, it may refuse to make the reference. But even in dealing with the question as to whether it would be expedient or not to make the reference Government must not act in a punitive spirit but must consider the question fairly and reasonably and take into account only relevant facts and circumstances.

14. Mr. Nanavati has further relied upon the decision of the Supreme Court in the case of Secretary, Indian Tea Association Vs. Ajitkumar Barat and others [(2000)3 SCC 93] wherein the Supreme Court has briefly summarized the law on the point as follows:

(1) The appropriate government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

(2) The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

(3) An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

(4) If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign

material, the court may in a given case consider the case for a writ of mandamus.

(5) It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

After applying the aforesaid principles, the Court in that case held that both the Appellate Court and the learned Single Judge of the High Court erred in law in issuing a Mandamus directing the State Government to make appropriate reference and, therefore, the judgment of the learned Single Judge and the judgment of the appellate Court were set aside.

15. Mr. Nanavati has further relied upon the decision of this Court in the case of Insafi Kamdar Mandal Vs. Assistant Commissioner of Labour & Conciliation Officer, Nadiad & Anr. [(2002)1 GLR 740] wherein it is held that Section 10(1) of the Industrial Disputes Act confers discretion on the Government to refer or not to refer the dispute and

for exercise of such discretion even *prima facie* examination of the merits of the dispute cannot be excluded. If the claim made is patently frivolous or clearly belated the Government may refuse to make a reference.

16. Mr. Nanavati has further relied upon the decision of the Supreme Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and others [AIR 2000 SC 469]for the preposition that the writ petition assailing on the ground of absence of industrial dispute is maintainable. The Hon'ble Supreme Court has held that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. The Court further held that it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial

dispute which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate Government lacks power to make any reference.

17. Based on the aforesaid factual position and decided case law, Mr. Nanavati strongly urged before the Court that the Assistant Labour Commissioner has committed a serious error of law in deciding to make a reference to the Labour Court and that the notice issued by the Labour Court on the petitioner for filing its written statements is without jurisdiction. Order making such reference is, therefore, absolutely illegal, contrary to the provisions of law, null and void and is required to be quashed and set aside.

18. Dr. Mukul Sinha, learned advocate, appearing with Mr. Rajesh P. Mankad for respondent Nos. 1 to 17, has, on the other hand, supported the order

passed by the Assistant Labour Commissioner making reference to the Labour Court. He has submitted that there is no substance in raising the contention that the petitioner is not an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. He has further submitted that the Government of Gujarat has made several references to the Industrial Tribunal and Labour Court concerned in respect of the workmen of the petitioner. He further submitted that looking to the ratio of judgment of the Hon'ble Supreme Court in Banglore Water Supply case, the petitioner establishment is certainly an Industry. He has further submitted that even the question as to whether the establishment is an industry or not can be adjudicated upon only by the Labour Court or Industrial Tribunal which are competent authorities and in that view of the matter also, the Assistant Labour Commissioner has rightly referred the dispute to the appropriate labour court for its adjudication.

19. Dr. Sinha has further submitted that the concerned workmen were the employees of the petitioner. Their work was being supervised by the officials of the petitioner. Necessary equipments/ material for doing the sanitation and cleaning were also being provided by the petitioner. Their salaries were also being disbursed by the petitioner. Admittedly their work was of perennial nature. There were other permanent employees employed by the petitioner, doing the same type of work as was done by these 16 ladies. He, therefore, submitted that the concerned workmen were the workmen of the petitioner. He has further submitted that these 16 ladies were under the direct control and supervision of the officials of the petitioner. The petitioner has not produced any so-called contract nor has produced any registration certificate or licence under the Contract Labour (Regulation & Abolition) Act, 1970. He, therefore, submitted that the petitioner was attempting to avoid the legal responsibilities by creating a paper-front camouflage.

20. Dr. Sinha has further submitted that the petitioner has mainly made two- fold prayers in the petition. Firstly, the petitioner has prayed for quashing and setting aside the order making reference to the Labour Court and secondly, prohibitory order was asked for prohibiting the Labour Court from proceeding further in the said reference. He has submitted that as far as the first prayer is concerned, it has become infructuous as the reference is already made to the Labour Court and the Labour Court is seized with the matter and the proceedings were already started. The petitioner has intentionally delayed the matter and challenged the said order belatedly before this Court. He has further submitted that the writ of prohibition is not maintainable. The petitioner has got most appropriate alternative remedy as the Assistant Labour Commissioner has not given any decision on the issue as to whether respondent Nos. 2 to 17 are workmen. The petitioner can agitate all these issues before the Labour Court. He has further submitted

that on the basis of the proceedings which have been conducted before the Assistant Labour Commissioner, it cannot be said that the reference made by the Assistant Labour Commissioner is frivolous or vexatious. The Assistant Labour Commissioner is not competent to decide the issues raised before him. Those issues can be decided only by the Labour Court after considering appropriate evidence and pleadings of the parties. He has further submitted that the reliance placed on the decision of the Hon'ble Supreme Court in the case of Secretary, Indian Tea Association (supra) is wholly irrelevant as in that case, the Hon'ble Supreme Court while summarizing the law on the issue has specifically held that the order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of reference closely to see that if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order. He has further submitted

that the Court further held that the order made by appropriate Government under Section 10 of the Act being administrative order, no lis is involved as such and an order is made on the subjective satisfaction of the Government. He, therefore, submitted that this subjective satisfaction of the Government cannot be challenged in the writ petition before this Court under Article 226 of the Constitution of India.

21. Dr. Sinha has further submitted that the basic decision on the exercise of power under Section 10 of the Industrial Disputes Act is the decision of the Supreme Court in the case of The State of Madras Vs. C.P. Sarathy [AIR 1953 SUP. COURT 53] wherein it is held that it is not to say that the Government will be justified in making a reference under Section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of establishments engaged in a particular industry.

It is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But, it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any way less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as it was not a judicial or quasi-judicial determination. No-doubt, it will be open to a party to impugn the resulting award to show that what was referred to by the Government was not an industrial dispute within the meaning of the Act and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters

entirely for the Government to decide upon, and it will not be open for the court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

22. Dr. Sinha has relied on the observations made by the Supreme Court in Telco Convoy Drivers Mazdoor Sangh and another Vs. State of Bihar and others [AIR 1989 SC 1565] wherein after discussing the rival contentions of the parties, the Hon'ble Supreme Court has observed in para 13 of the judgment that attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under Section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon

itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act.

23. Dr. Sinha has further relied upon the decision of the Supreme Court in the case of Sharad Kumar Vs. Government of NCT of Delhi and others [(2002)4 SCC 490], wherein it is held that the determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s), thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Thus, the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable.

24. Lastly, Dr. Sinha has relied on the unreported judgment of the Division Bench of this Court in Special Civil Application No. 8549 of 1988 decided on 28th September, 1992. It is some what in similar circumstances, the reference was made to the Industrial Tribunal, Ahmedabad and the said reference was decided in favour of the workmen which was challenged before this Court in the writ petition. It was a case of National Institute of Design, Ahmedabad. On behalf of the Institute, same contentions were raised which are raised in the present petition. The Court observed in its judgment that the third group of employees consists of 31 women sweepers who were admittedly doing the manual work of cleaning the premises of the institute for at least three hours in the morning. It is also not in dispute that they are all harijans belonging to the poorest of the poor strata of society and they were being paid before raising the dispute at the rate of Rs.5/- only per day. The institute contended that these female

sweepers were brought on the premises of the institute by the trade-union namely SEWA Saundarya Mandali and they belong to the co-operative society namely SEWA Saundarya Mandali being safai workers mandali. In that case also, the contention was raised that the said arrangement was sort of hybrid arrangement which squarely may not fall within the four corners of the Contract Labour (Regulation and Abolition) Act, 1970. It was not as if such Mandali could not employ these sweepers as an independent contractor but in any case his effort was to demonstrate that there was no direct contractual relationship between two contract part-time sweepers on the one hand and Institute on the other hand. The said institute used to regulate the distribution of the wages to these women sweepers and the institute was handing over full consideration as per the contract with the mandali to the office bearers of the mandali and the mandali used to take care of the service conditions of these women. Therefore, the women sweepers could not be said to be the temporary part time employees of the

petitioner institute. The said contentions were got to be supported by oral as well as documentary evidence led by the Institute. The Institute has also examined office bearer in support of their contentions. On the other hand, the Union has filed affidavit of almost all the female scavengers to establish their case that they were working since many years on the campus of the institute. They were under the supervisory control of the officers of the institute and they were in sum and substance the employees of the institute. The Tribunal has examined relevant oral and documentary evidence on the point as offered by both the sides and having considered all the pros and cons of the case on the point has given detailed reasons for arriving at its findings as to why the case of the petitioner institute could not be accepted and how the case of the union stood the test of probabilities and deserves to be accepted. The Tribunal has accepted the version put forth by the lady workmen and has repelled the contention of the institution that these lady workmen had no direct connection with

the cleaning work which they had done for the institute for years. The court has carefully gone through the said reasoning and the conclusion to which the Tribunal reached and the said conclusion in the opinion of the Court was well established on record. The Court has also recorded in its judgment the factual conclusions arrived at by the Tribunal, which are as under:

(a) That the 31 ladies have been doing the work of cleaning and sweeping all the buildings, roads inside the premises, mess block, offices etc,. Since 1981;

(b) that these ladies have been continuously doing the work for more than six years;

(c) that Shri Bhagwat P. Shah, an employee of the institute used to do the work of supervision over these employees;

(d) that these ladies were taking tea in the canteen of the institute between 10.30 am and 11.00 am.

(e) that the entire amount obtained by the

Mandali from the institute was disbursed to the ladies without any deduction except an amount of Rs. 100/- which was taken out as administrative charges;

(f) that neither SEWA nor the mandali had any licence under the Contract Labour (Regulation & Abolition) Act;

(g) that SEWA was a registered trade union under the Trade Unions Act;

(h) that members of the mandali were engaged to do the cleaning work only after the previous workers of the institute had declined to do the work;

(i) that the institute used to make monthly payments to Mandali as emoluments to be paid to the 31 ladies;

(j) that the institute used to give the amount necessary to buy equipments for cleaning and sweeping; and

(k) that neither SEWA nor the Mandali got any amount as commission or as profit.

The Court has also discussed at length various

circumstances which were weighed with the Tribunal while arriving at the conclusion that 31 ladies were employees of that institute. On the basis of that judgment, Dr. Sinha has strongly urged before this Court that the said decision is squarely applicable to the facts of the present case. Therefore, he submitted that the petition deserves to be dismissed with costs.

25. Dr. Sinha has lastly submitted that even present respondent No.19 i.e. Mandali has also filed Special Civil Application No. 8290 of 1992 before this Court challenging the order making reference to the Labour Court and also seeking direction to the Assistant Labour Commissioner- respondent No.1 in that matter to join the petitioner mandali as a necessary party to the proceedings before it and conduct denovo inquiry and conciliation proceedings. While disposing of the said petition, vide its order dated 15.1.1993, this Court has directed that if and when the petitioner makes an application for being joined as party in References

being No. 3276 of 1992 to 3291 of 1992, the Labour Court shall decide the application bearing in mind the observations made by this Court in the said judgment and shall not proceed further with the references unless the applications are decided first. He has, therefore, submitted that even on this ground also, the present petition deserves to be quashed and set aside.

26. After having heard the learned advocates for the parties and after having gone through the pleadings of the parties made before the Assistant Labour Commissioner and after having carefully considered the contentions raised in the present petition as well as the authorities cited before the Court, the Court is of the view that the impugned order passed by the Assistant Labour Commissioner, Ahmedabad does not call for any interference of this Court while exercising its extraordinary writ jurisdiction under Articles 226 and 227 of the Constitution of India. While making the reference, the Assistant Labour Commissioner has observed that

the industrial dispute pertaining to the matters regarding 16 lady workers is required to be referred to the Labour Court while exercising his powers vested in him under Section 10(1)(c) of the Industrial Disputes Act and the dispute was as to whether these 16 ladies should be reinstated in service in their original posts with full back wages for the intervening period. During the course of conciliation proceedings, the petitioner has filed its reply and counter reply was filed on behalf of the Union. The plain reading of the reply as well as counter reply makes it clear that the petitioner has raised the dispute as to whether these 16 ladies are the employees of the petitioner or whether the petitioner is an 'Industry'. The Union has filed its counter reply, wherein it is stated that these 16 ladies were the employees of the petitioner. The Assistant Labour Commissioner is not competent to decide as to whether these 16 ladies are the employees of the petitioner. It requires adjudication and proper forum for adjudication is either the Industrial Tribunal or

Labour Court. The Assistant Labour Commissioner has to merely discharge his function as an administrative officer. He has to record prima facie subjective satisfaction and after having come to this subjective satisfaction, he has to refer the dispute to the Labour Court or to the Industrial Tribunal. Whether particular person is an employee of the institute or not, requires leading of evidence oral as well as documentary. This could be done only at the level of either the Labour Court or Industrial Tribunal where both the parties do get the opportunity of leading their evidence. It is held by the Courts on number of occasions, that the proceedings should not be terminated prematurely. If the reference is rejected, the Conciliation Officer has to record the reasons for that under Section 12(5) of the Act. However, while making the reference, it is not necessary to record any reason. Merely because the reasons are not recorded while making the reference, it cannot be said that the order is without application of mind. It is also important

to note here that before the Assistant Labour Commissioner, the award passed by the Industrial Tribunal in the case of NID was pointed out wherein on similar situation, the Industrial Tribunal has come to the conclusion that those 31 ladies were the employees of National Institute of Design. It was also pointed out that the petition was pending before this Court being Special Civil Application No. 8549 of 1988. The Court has also considered the relevant observations made by the Hon'ble Supreme Court in the decision of State of Madras Vs. C.P. Sarathy (supra) wherein, in no uncertain terms, the Supreme Court has observed that if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash and set aside the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on

which it could have come to an affirmative conclusion. The Court has also considered the binding judgment of the Supreme Court and observations made therein which are squarely applicable to the facts of the present case. The determination of the questions or issues which are raised in this petition requires examination of factual matters and for that purpose, all relevant materials including oral as well as documentary evidence will have to be led before the Labour Court and same are required to be considered. If this is the situation then in that case, the Government could not arrogate unto itself the power to adjudicate on the question and hold that 16 ladies were not the workmen within the meaning of Section 2(s) of the Act and terminate the proceedings prematurely. This issue will have to be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the parties. Simply because the dispute is raised before this Court regarding employer-employee relationship or whether the petitioner is an

'industry' or not, the order making reference passed by the Assistant Labour Commissioner cannot be quashed and set aside.

27. In the above view of the matter, the Court does not find any substance in the petition and it is accordingly dismissed. Rule is discharged with no order as to costs.

Sd/-

[K.A. PUJ, J.]

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